

REMARKS

Based on the Office's view that the November 8, 2006, amendment was non-responsive, applicant had understood it was not entered. (MPEP § 821.03 provides, "*An amendment canceling all claims drawn to the elected invention and presenting only claims drawn to the nonelected invention should not be entered. Such an amendment is nonresponsive.*") The amendments submitted on February 22 were thus drafted as if the November 8 amendment had not been filed.

By the foregoing amendment, applicant has re-numbered (and re-presented) the claims as required by the Examiner. Reconsideration is requested.

The August Action was thorough, and much time evidently went into its preparation. Applicant appreciates the detailed attention given this matter by the Examiner (notwithstanding the fact that Applicant disagrees with the conclusions reached).

The § 112 issues noted by the Examiner are believed to have been addressed by the foregoing amendments. The undersigned stands ready to make any further such amendments that may be required.

Some of the apparatus claims have been amended to better define structural limitations, by stating that an element is "adapted" in a specified manner. Such limitations have frequently been considered, and given patentable weight, by the Federal Circuit. *See, e.g., Intermatic, Inc. v. Lamson & Sessions Co.*, 273 F.3d 1355 (Fed. Cir. 2001); *McKeown v. Bayshore Concrete Prod. Corp.*, 2002 WL 914339 (Fed. Cir. May 7, 2002); *CCS Fitness Inc. v. Brunswick Corp.*, 288 F.3d 1359 (Fed. Cir. 2001); *Kraft Foods, Inc. v. International Trading Co.*, 203 F.3d 1362 (Fed. Cir. 2000); *Mattox v. Infotopia*, 136 Fed.Appx. 366 (Fed.Cir. 2005); *Hill-Rom, Inc. v. Ohmeda Medical*, 34 Fed. Appx. 733 (Fed. Cir. 2002); *Nazomi Communications, Inc. v. ARM Holdings, PLC*, 403 F.3d 1364, (Fed. Cir. 2005), *etc.*

Applicant continues to traverse the obviousness rejections, e.g., because the Office failed to offer a compelling rationale that would have motivated an artisan to combine prior art references in manners necessary to yield the particular arrangements claimed. Instead, hindsight seems – impermissibly – to have been employed. However,

such obviousness rejections are believed further addressed by the foregoing amendments, so are not belabored.

For example, claim 52 (formerly claim 1) now requires that the steganographic encoder is adapted to generate an encoding signal that depends, at least in part, on information received by the radio receiver circuitry and stored in the memory. No such arrangement is taught or suggested by any of the art.

Similarly, claim 55 (formerly claim 4) requires “receiving data wirelessly sent from a remote transmitter” and “the encoding depending, at least in part, on the received data.” Again, neither Ariyavisitakul, Ari, Hembrook, Hopper nor Reeds is believed to teach or suggest such arrangement.

The rejection of claims 8 and 16 (now claims 59 and 62) asserted that “... *where data is encoded so that it is not easily detected by unauthorized parties, the steganographic encoder must be responsive at least in part to the data in which the hidden plural-bit auxiliary code is encoded. If this were not the case, then there is a risk of easily detected steganographic encoding by unauthorized parties.*”

This assertion is not correct. Consider an audio track comprised of 16-bit samples, which is to serve as the host signal (*i.e.*, the data in which a hidden plural-bit code is encoded) for steganographic encoding. The least-significant bit plane of this audio track can be replaced with bits of an auxiliary data channel to effect steganographic encoding. Such encoding is not “easily detected,” yet it is not responsive at least in part to the host data.

Certain language earlier included in claims 16, 20 and 21 was not considered by the Office in adjudging the patentability of the claim. The claims have been amended (and renumbered as 62, 65 and 66) to recast such language so that it should be given patentable weight.

The citation of Reeds in connection with claim 20 (now claim 65) is noted. However, Reeds is not understood to teach an application of pseudo-random signals akin to that claimed by applicant. Indeed, Reeds’ arrangement employs pseudo-random data in a challenge-response protocol. His disclosure does not suggest any application of such sequences to the arrangement presently claimed.

Moreover, applicant respectfully submits that the offered motivation to combine, *i.e.*, “because it would be useful in authenticating the identity of the cell phone user thereby preventing cell phone fraud,” does not compel a conclusion that an artisan would have been motivated to employ Reed’s pseudo-random signal to yield the arrangement of claim 20 (now claim 65). Rather, such logic – if pursued – would seem to yield a cell phone that employs a challenge-response protocol using pseudo-random sequences.

Regarding the rejection of claim 21 (now claim 66), applicant respectfully submits that the Office misconstrues Hopper by stating it teaches an encoder “*serving to increase certain of said sample values and decrease others (col. 3, lines 44-61)*.” The cited passage does not teach this. Rather, it teaches a modulation process in which two inputs yield four outputs: the two original inputs, as well as their sum and their difference. The latter two are “sidebands.” But nothing here teaches increasing certain sample values and decreasing others.

The rejection of claim 25 (now claim 69) is respectfully traversed. The Office did not cite prior art addressing the limitation concerning the claimed dependence on the *dynamics* of the sampled input information (*see, e.g.*, applicant’s specification at page 10, lines 1-6). In view of such deficiency, applicant does not lengthen this response with other remarks concerning the claim, the art, and the rejection.

The new dependent claims introduce further details that further establish the novelty and non-obviousness of such claims.

Applicant takes issue with many of the arguments presented by the Examiner. For brevity’s sake, however, not each of these is addressed. (Applicant’s view is reciprocal to the Examiner’s, who stated, “[T]he Examiner does not admit to agreeing with any arguments by applicant...”)

Certain claims have been canceled to expedite prosecution. No surrender of subject matter is intended. Applicant reserves the right to pursue claims of the same, or commensurate, scope in one or more other applications.

Applicant submitted an IDS in November, 2006. The Examiner is requested to return an initialed copy of same with the next communication.

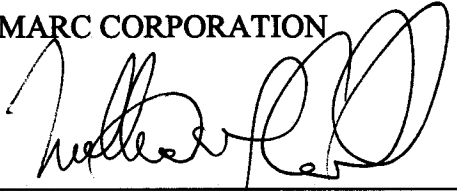
Date: May 24, 2007

CUSTOMER NUMBER 23735

Phone: 503-469-4800
FAX 503-469-4777

Respectfully submitted,

DIGIMARC CORPORATION

By 

William Y. Conwell
Registration No. 31,943